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Attorneys for Defendant EMERYVILLE HOTEL DEVELOPMENT VENTURE II, L.P.

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA**

Case No.: 4:21-cv-00007-DMR

BRIAN WHITAKER,

Plaintiff,

v.

EMERYVILLE HOTEL DEVELOPMENT  
VENTURE II, L.P., a California Limited  
Partnership,

Defendant.

**NOTICE OF MOTION AND MOTION  
TO DISMISS COMPLAINT**

Date: March 25, 2021  
Time: 1:00 P.M.  
Courtroom: 4, 3<sup>rd</sup> Fl.  
Oakland Courthouse

Hon. Donna M. Ryu

**TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT on March 25, 2021, or as soon thereafter as the matter may be heard in Courtroom 4 of the above-entitled court, Defendant EMERYVILLE HOTEL DEVELOPMENT VENTURE II, L.P. will and hereby does move to dismiss the Complaint in its entirety, pursuant to Fed. R. Civ. P. 12(b)(6). All of the asserted claims arise from Plaintiff's visit to the Defendant's reservations website (the "Website"), and Plaintiff's claim that the Website fails to provide sufficient information about the accessible features in the accessible guestrooms in violation of the Americans with Disabilities Act and California's Unruh Civil Rights Act. The Complaint lacks sufficient factual allegations under applicable pleading standards to establish a plausible entitlement to relief with respect to any of the claims asserted.

This motion is based on this Notice and the accompanying Memorandum of Points and Authorities, Request for Judicial Notice, all pleadings and documents on file herein, and on such other and further evidence as may be presented at or before the hearing on this matter.

This motion is made following the conference of counsel which took place on December 4, 2020 and on February 3, 2021.

WHEREFORE, Defendant EMERYVILLE HOTEL DEVELOPMENT VENTURE II, L.P. respectfully request that this Court dismiss the Complaint with prejudice and without leave to amend.

Respectfully Submitted,

STILLMAN & ASSOCIATES



Dated: February 11, 2021

By: \_\_\_\_\_  
Philip H. Stillman, Esq.  
Attorneys for Defendant EMERYVILLE HOTEL  
DEVELOPMENT VENTURE II, L.P.

**PROOF OF SERVICE**

I, the undersigned, certify under penalty of perjury that on February 12, 2021 or as soon as possible thereafter, copies of the foregoing Motion to Dismiss, Memorandum of Points and Authorities, the Request for Judicial Notice and Proposed Order was served electronically by the Court's ECF notice to all persons/entities requesting special notice or otherwise entitled to the same.

By: /s/ Philip H. Stillman  
Attorneys for EMERYVILLE HOTEL  
DEVELOPMENT VENTURE II, L.P.